

**Bennett Construction, Inc. and Michigan Carpenters
Fringe Benefit Funds. Case 7-CA-31917**

February 13, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

Upon a charge filed by Michigan Carpenters Fringe Benefit Funds on May 23, 1991, the General Counsel of the National Labor Relations Board issued an amended complaint on September 18, 1991, against Bennett Construction, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and amended complaint, the Respondent has failed to file an answer.

On November 6, 1991, the General Counsel filed a Motion for Summary Judgment. On November 8, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The amended complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the Amended Complaint shall be deemed to be admitted true and may be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Regional Office by letter dated October 4, 1991, notified the Respondent that unless an answer was received by October 18, 1991, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Michigan corporation, is engaged in the business of providing carpentry serv-

ices in Freeport, Michigan, where it annually receives gross revenues in excess of \$500,000 and purchases goods and materials which are valued in excess of \$50,000 directly from out-of-state suppliers and which are shipped to the Respondent's facility and jobsites in Michigan. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that West-Central Michigan District Council of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All full-time and regular part-time journeyman carpenters [and] apprentice carpenters employed by Bennett Construction from out of its facility located at 13873 108th Street, Freeport, Michigan; but excluding all guards and supervisors as defined in the Act.

Since August 16, 1990, the Union has been recognized by the Respondent by virtue of a Michigan State Counsel Consent Agreement, as the exclusive collective-bargaining representative of the employees in the unit described above within the meaning of Section 9(a) of the Act. The Respondent and the Union are parties to a collective-bargaining agreement effective until May 31, 1992.

By letter dated January 10, 1991, the Charging Party, on behalf of the Union, requested the Respondent to furnish it with certain payroll and financial information. The information requested by the Charging Party is necessary for, and relevant to, the Union's performance of its function as the exclusive collective-bargaining agent of the unit employees. Since January 10, 1991, the Respondent has refused to furnish the requested information.

Since November 23, 1990, the Respondent has unilaterally modified the current collective-bargaining agreement between it and the Union by failing to make the contractually required fringe benefit contributions for unit employees. The terms and conditions of the contract pertaining to fringe benefit contributions, which the Respondent unilaterally modified, are terms and conditions of employment of unit employees and are mandatory subjects of bargaining.

By the acts described above, the Respondent has refused to bargain collectively with the representative of its employees, and thereby has engaged in

unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

CONCLUSIONS OF LAW

1. By refusing to furnish to the representative designated by the Union information necessary for, and relevant to, the Union's performance of its collective-bargaining functions, the Respondent has engaged in an unfair labor practice affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

2. By failing to pay contractually required fringe benefit contributions for employees in the unit, the Respondent has engaged in an unfair labor practice affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. We shall order the Respondent to provide the information requested to the representative designated by the Union. We shall further order the Respondent to remit all contractually required fringe benefit contributions.¹ Finally, we shall order the Respondent to make whole all employees for any medical or other expenses resulting from the Respondent's failure to remit required fringe benefit contributions,² with interest, as described in *New Horizons for the Retarded*.³

ORDER

The National Labor Relations Board orders that the Respondent, Bennett Construction, Inc., Freeport, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to provide to the representative designated by the West-Central Michigan District Council of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, requested information necessary for, and relevant to, the Union's performance of its function as exclusive collective-bargaining agent of the unit employees. The appropriate unit is:

All full-time and regular part-time journeyman carpenters [and] apprentice carpenters employed by Bennett Construction from out of its

facility located at 13873 108th Street, Freeport, Michigan; but excluding all guards and supervisors as defined in the Act.

(b) Failing to pay contractually required fringe benefit contributions for unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide the information requested to the representative designated by the Union.

(b) Make whole the Charging Party for any and all fringe benefit contributions that are delinquent by paying the fringe benefits amounts due to it, with any additional amounts owed computed in accordance with the remedy section of this Decision and Order.

(c) Make whole employees for any medical or other expenses resulting from the Respondent's failure to remit the contractually required fringe benefit contributions, with interest computed in accordance with the remedy section of this Decision and Order.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying all payroll records, wage rate and other records, work schedules, production reports and data, social security payment records, timecards, personnel records and reports, and all other records and entries necessary to determine the sums due under this Order.

(e) Post at its facility in Freeport, Michigan, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

¹ Any additional amounts owed to the fringe benefit funds shall be calculated in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).

² *Kraft Plumbing & Heating*, 252 NLRB 891, 891 fn. 2 (1980).

³ 283 NLRB 1173 (1987).

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to provide to the representative designated by the West-Central Michigan District Council of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, requested information necessary for, and relevant to, the Union's performance of its function as exclusive collective-bargaining agent of unit employees. The appropriate unit is:

All full-time and regular part-time journeyman carpenters [and] apprentice carpenters employed by Bennett Construction from out of its facility located at 13873 108th Street, Freeport, Michigan; but excluding all guards and supervisors as defined in the Act.

WE WILL NOT fail to pay contractually required fringe benefit contributions for unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL provide the information requested to the representative designated by the Union.

WE WILL remit all contractually required fringe benefit contributions.

WE WILL make whole the Charging Party for any and all fringe benefit contributions that are delinquent by paying the fringe benefits amounts due to it, with any additional amounts owed computed in accordance with the remedy section in the Board's Decision and Order.

WE WILL make whole employees for any medical or other expenses resulting from the Respondent's failure to remit the contractually required fringe benefit contributions, with interest computed in accordance with the remedy section of the Board's Decision and Order.

BENNETT CONSTRUCTION, INC.